IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.855 of 2007 (O&M)
Date of Decision : 25.09.2007.

Bhim Singh and others .....Appellants

versus

Smt.Omwati and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.Raj Mohan Singh, Advocate for the appellants

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JUDGMENT

HEMANT GUPTA, J. (Oral)

C.M.No.2347-C of 2007

For the reasons mentioned in the application the delay of 5 days in filing the appeal is condoned subject to all just exceptions.

C.M.No.2346-C of 2007

For the reasons mentioned in the application the delay of 40 days in refiling the appeal is condoned.

R.S.A.No.855 of 2007.

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit filed by the plaintiff to claim the estate of her father Kamal Singh by way of natural succession was decreed.

The appellants have relied upon a Will dated 27.2.1988, to contend that the plaintiff has no right in the estate of the deceased Kamal Singh. It has been found that though the attesting witnesses have been examined, but the defendants have not led any evidence to prove the thumb impressions on the Will as that of deceased Kamal Singh. Still further,

Kamal Singh had died on 7.3.1988, i.e. after 10 days of execution of the Will.

Initially, the mutation of the estate of Kamal Singh was sanctioned in favour of all his natural heirs including the plaintiff, but subsequently, the mutation was changed when the Will was produced. It is, thus, apparent that in the first instance, the defendants have not produced the Will. Thus, the reliance of the Will seems to be an afterthought.

Both the Courts below have considered the entire evidence to return a finding that the Will is surrounded by suspicious circumstances and that there is no reason to discard the right of the plaintiff. Such finding is based upon proper appreciation of evidence. The findings recorded by the Courts below are sought to be disputed by re-appreciation of evidence in second appeal.

I do not find any illegality or irregularity in the finding recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal.

Consequently, the present appeal is dismissed.

25-09-2007 (HEMANT GUPTA)
*mohinder JUDGE